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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. SONIA YVETTE MARTINEZ, Defendant and Appellant.	E069654 (Super.Ct.No. FWV17003160) OPINION

APPEAL from the Superior Court of San Bernardino County. Ingrid Adamson Uhler, Judge. Affirmed.

Ami Sheth Sagel, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, and Daniel Rogers and Christopher P. Beesley, Deputy Attorneys General, for Plaintiff and Respondent.

I. INTRODUCTION

Defendant and appellant, Sonia Yvette Martinez, was charged with one count of second degree robbery (Pen. Code, § 211),[1] tried by a jury, and convicted. Defendant was sentenced to two years in prison and appealed.

On appeal, defendant argues there was insufficient evidence to support a finding that defendant took any property belonging to Lucia C. We affirm the judgment.

II. FACTUAL BACKGROUND

On August 12, 2017, Lucia C. drove to her hair salon located on South Riverside Avenue in Rialto, California. Lucia C. parked her truck approximately 27 to 28 feet from the salon and went inside for more than five hours. She left her purse underneath the driver's seat of the truck. About 5:00 p.m., Hilda S., a worker at a nearby store, saw an individual (later identified as defendant) inside Lucia C.'s truck. Defendant was leaning into the truck with her left leg on the truck's seat and was throwing items into a stroller with her right arm. Hilda S. went to Lucia C.'s salon and informed her that somebody was inside her truck. Lucia C. looked through her store's window and observed defendant with half her body in the truck.

Lucia C. walked out of her salon and approached the truck. Lucia C. arrived at the truck approximately two to three minutes after first observing defendant.

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[1] All further statutory references are to the Penal Code.

Lucia C. asked defendant what she was doing and asked what she took from the truck. Defendant threatened Lucia C., stating, "'If you don't leave me alone, I'm going to spray your face,'" while holding a bottle of pepper spray. Lucia C. told defendant she could leave if she returned Lucia C.'s property, though Lucia C. was not certain that defendant had taken anything at that time. Lucia C. then grabbed the stroller and began looking through it for any property of hers. Defendant sprayed Lucia C. with pepper spray and threatened to "'knock [her] down'" in Spanish. The pepper spray temporarily blinded Lucia C.

Defendant and Lucia C. then struggled with each other, each grabbing and holding on to the other. At some point defendant pushed Lucia C., knocking her to the ground. Defendant also fell down. Defendant used her knees and legs to kick and hit Lucia C. while she was on the ground.

While the struggle ensued, bystanders yelled at defendant to either "'let it go'" or "'let her go.'" It is unknown how many people were present during the struggle. Hilda S. called 911 and began screaming for help. At some point thereafter, a man in a white shirt approached and broke up the struggle. Hilda S. testified that she believed he was a customer from a neighboring bicycle repair shop. Defendant then departed with the stroller in the same direction as the man in the white shirt. Defendant threatened the onlookers with pepper spray as she departed.

A law enforcement officer found defendant about 600 feet diagonally south and across the street from the site of the struggle. Officer Joshua Comen was about a quarter mile from where his colleague found defendant, and was dispatched to help. Officer Comen arrived at defendant's location between 50 and 120 seconds after receiving the dispatch. It is unknown how much time elapsed between the struggle and defendant's detention.

Defendant had the stroller and pepper spray with her when Officer Comen arrived to help detain her. The officers did not conduct a thorough search of the area for any potentially stolen property. Officer Comen did not stay with defendant for longer than it took to detain her.

After helping detain defendant, Officer Comen went to the scene of the struggle and spoke to both Lucia C. and Hilda S. Officer Comen estimated that he spoke to Lucia C. about 30 minutes after defendant pepper sprayed her.

Officer Comen and Lucia C. then inspected the truck together. They noted that the driver's side door of the truck had been "punched." This means that the silver portion of the door handle where the key is put in to unlock the door was missing. They then inspected the interior of the truck. This was the first time Lucia C. had checked the interior of her truck since discovering defendant inside. The truck's interior was not the way Lucia C. left it, and Officer Comen stated that it looked as if someone had rifled through the contents. Lucia C. initially believed her purse was missing because it was

not visible underneath the driver's seat. She did eventually find the purse in the truck, but it was further back than she left it and could only be seen after moving the seat. Lucia C. inspected the purse and discovered that $900 in cash—thirty $20 bills and three $100 bills—was missing. Lucia C. could not identify whether anything else was missing.

After inspecting the truck, Officer Comen performed an in-field showup with Lucia C., Hilda S., and one other witness. All three identified defendant as the person who broke into Lucia C.'s truck and fought with her.

Officers also examined defendant's belongings, including the items in her stroller. These items were booked into custody. At some point, officers also booked the items on defendant's person. None of these items were identified as belonging to Lucia C. However, defendant did have multiple other items which did not belong to her, including a license plate. Defendant also had a screwdriver-like tool which Officer Comen recognized as a tool that could be used to break into vehicles. The officers never asked Lucia C. whether any of the items in defendant's stroller were hers. The missing $900 was never recovered.

Defendant was charged with second degree robbery. (§ 211.) A jury convicted defendant on the sole count following trial. Defendant was sentenced to two years in state prison. Defendant timely filed her notice of appeal on December 8, 2017. (Cal. Rules of Court, rule 8.308.)

III. DISCUSSION

Defendant argues there is insufficient evidence of any taking to support her conviction for second degree robbery in violation of section 211. We disagree.

When reviewing a sufficiency of the evidence claim, an appellate court determines whether, on the entire record, a rational trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Smith* (2005) 37 Cal.4th 733, 738-739; *People v. Johnson* (1980) 26 Cal.3d 557, 578.) In doing so, we "'must view the evidence in a light most favorable to respondent and presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.'" (*People v. Johnson, supra*, at p. 576, quoting *People v. Mosher* (1969) 1 Cal.3d 379, 395.) "Reversal on this ground is unwarranted unless it appears 'that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].'" (*People v. Bolin* (1998) 18 Cal.4th 297, 331, quoting *People v. Redmond* (1969) 71 Cal.2d 745, 755.) "We resolve all evidentiary conflicts and questions of credibility 'in favor of the verdict, drawing every reasonable inference the jury could draw from the evidence.'" (*People v. Brady* (2018) 22 Cal.App.5th 1008, 1014, quoting *People v. Cardenas* (2015) 239 Cal.App.4th 220, 226-227.)

"Substantial evidence must be of ponderable legal significance, reasonable in nature, credible and of solid value." (*People v. Briscoe* (2001) 92 Cal.App.4th 568, 585.) However, "[t]he trial court, not the reviewing court, 'is vested with the power to judge the credibility of the witnesses, resolve any conflicts in the testimony, weigh the evidence

and draw factual inferences . . . .'" (*People v. Duncan* (2008) 160 Cal.App.4th 1014, 1018, quoting *People v. Woods* (1999) 21 Cal.4th 668, 673.) "'The uncorroborated testimony of a single witness is sufficient to sustain a conviction, unless the testimony is physically impossible or inherently improbable.'" (*People v. Duncan*, *supra*, at p. 1018.)

"The standard of review is the same in cases in which the People rely mainly on circumstantial evidence." (*People v. Stanley* (1995) 10 Cal.4th 764, 792.) """Circumstantial evidence may be sufficient to connect a defendant with the crime and to prove his guilt beyond a reasonable doubt."' [Citation.]" (*Id.* at p. 793.) """If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment.'" [Citations.]'" (*Ibid.*)

To prove a violation of section 211, the prosecution must show (1) the defendant took property that was not their own, (2) another person possessed the property, (3) the property was taken from the owner or their immediate presence, (4) the property was taken against the owner's will, (5) the defendant used force or fear to take the property or to prevent the owner from resisting, and (6) the use of force or fear was intended to permanently deprive the owner of the property. (CALCRIM No. 1600; § 211.) "'The taking element of robbery itself has two necessary elements, gaining possession of the victim's property and asporting or carrying away the loot.'" (*Miller v. Superior Court* (2004) 115 Cal.App.4th 216, 221, quoting *People v. Cooper* (1991) 53 Cal.3d 1158, 1165.) The property taken does not need to be of significant value. "'If the other

elements are satisfied, the crime of robbery is complete without regard to the value of the property taken.'" (*People v. Clark* (2011) 52 Cal.4th 856, 943, quoting *People v. Tafoya* (2007) 42 Cal.4th 147, 170.)

It is undisputed that defendant was in Lucia C.'s truck, that she used force against Lucia C. to effect her escape, and that any taking was against Lucia C.'s will. The only issue on appeal is whether there was sufficient evidence that defendant took anything belonging to Lucia C. There is no evidence that anyone other than Lucia C. had access to the truck prior to defendant's entry. Indeed, given the truck's lock was breached, it is a reasonable inference that it was locked prior to the incident. Nevertheless, $900 that was in the truck before defendant's entry was missing afterwards. Lucia C. also noted that the purse which contained Lucia C.'s $900 was not in its original location in the truck, suggesting it was moved. Given this evidence, the jury was entitled to draw the reasonable inference that defendant took Lucia C.'s money. That defendant was not found with the missing $900 does not mean the jury could not conclude she took it. Defendant was seen inside Lucia C.'s truck throwing things into a stroller and the money was missing immediately after the break-in. It is well settled that just because circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment. (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11.)

Defendant argues she did not have enough time to ditch the money between her departure from the scene and her apprehension.[2] Even if this time interval was as short as defendant suggests, it does not take much time to hide or dispose of a handful of cash. Officer Comen did not search for any stolen property anywhere other than on defendant's person, in her stroller, or at the scene of the incident. In short, the jury could have reasonably concluded that defendant divested herself of the $900 before she was apprehended, and that it was not recovered because the officers involved did not look for it.

The facts of this case are substantially similar to those in another case which held that circumstantial evidence of missing money was sufficient to show a taking: *People v. Hornes* (1959) 168 Cal.App.2d 314, 320. In *Hornes*, the defendants were convicted of robbery after one of them forced a service station attendant to leave the station while the other approached the place where the cash was kept. (*Id.* at pp. 316-317.) While the attendant did not see anyone take any money, he estimated that $190 was taken. (*Id.* at p. 320.) The money was not found in the defendants' possession when they were apprehended only 45 minutes later. (*Id.* at p. 317.) Nevertheless, the court concluded the attendant's testimony regarding the missing money was sufficient evidence of a taking. (*Id.* at p. 320.)

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[2] Defendant maintains that the time between the alleged robbery and the police finding and detaining her was "minutes."

Hornes makes clear that to satisfy the taking element of robbery, it is enough to show that money which was present before the defendant obtained access to it was missing afterwards. The defendant need not be found with the money in his or her possession.

Given the above, there is substantial evidence that defendant took Lucia C.'s property.

IV. DISPOSITION

The judgment is affirmed.

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FIELDS
J.

We concur:

CODRINGTON
Acting P. J.

RAPHAEL
J.